



In Reply Refer To:
19-CPA-0030

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Peter R. Blum, Chief
Planning Division, Philadelphia District
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Ms. Beth Brandreth

NOV 28 2018

Dear Mr. Blum:

The U.S. Fish and Wildlife Service (Service) received your November 15, 2018 request for streamlined (Tier 2) formal consultation regarding U.S. Army Corps of Engineers, Philadelphia District (Corps) proposed repairs to the Hereford Inlet Seawall in the City of North Wildwood, Cape May County, New Jersey. This response serves as Tier 2 streamlined consultation pursuant to the Service's December 2005 Programmatic (Tier 1) Biological Opinion on the Effects of Federal Beach Nourishment, Re-nourishment, Stabilization, and Restoration Activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the Federally Listed (threatened) Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus pumilus*) (PBO).

AUTHORITY

The following comments are provided under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA). These comments are consistent with the intent of the Service's Mitigation Policy (Federal Register, Vol. 46, No. 15, Jan. 23, 1981). The Service's Mitigation Policy and the Section 404(b)(1) Guidelines emphasize that avoidance and minimization precede compensation, which is to be considered solely for unavoidable adverse impacts on fish and wildlife resources and their supporting ecosystems.

CONSULTATION HISTORY

Correspondence was exchanged among the Service, Corps, and the New Jersey Department of Environmental Protection's Division of Fish and Wildlife – Endangered

and Nongame Species Program (ENSP) regarding the proposed repairs to the Hereford Inlet Seawall. A chronology of key correspondences is provided below.

November 15, 2018 The Corps requested the Tier 2 consultation to conduct the subject repairs with a proposed starting date of early 2019, requiring approximately 300 days to complete. No piping plover monitor is proposed by the Corps.

November 26, 2018 The ENSP reviewed the subject project with the New Jersey Division of Land Use Regulation and did not provide any objections to the project.

PROJECT DESCRIPTION

The project would entail removing and replacing displaced capstone and stabilizing the seawall slope with additional concrete marine mattresses and stone fill. Work would be conducted both from land and water, impacting approximately 0.7 acre of subtidal water.

ADHERENCE TO MEASURES TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES

Relevant conservation measures proposed by the Corps for protection of federally listed species and reasonable and prudent measures imposed by the Service to minimize take of federally listed species are specified within the Service's December 2005 Tier 1 PBO and are applicable to all Tier 2 projects carried out under the Corps' program.

The seawall does not provide habitat or piping plovers to nest. The southern limit of the project area is 2,200 feet from the northern limit of the piping plover nesting area. Piping plovers have not been documented nesting near the mouth of the inlet since 2015.

The federally listed (threatened) plant seabeach amaranth was never documented as occurring on the City of North Wildwood beaches.

A final rule to list the red knot as threatened under the ESA was published on December 11, 2014, with an effective date of January 12, 2015. Small numbers of red knots may occur in New Jersey year-round, while large numbers of birds rely on Atlantic Coast stopover habitats during the fall (late-July through October) migration period. The Service concurs with the Corps that red knots will not use the project area for foraging, although they may be present at Stone Harbor Point, North Wildwood beaches, and back bays during fall migration. The effects of the project are discountable and the Service concurs that the project is not likely to adversely affect the red knot.

STATUS OF THE SPECIES

Relevant biological and ecological information for the piping plover and seabeach amaranth was provided to the Corps in the Service's December 2005 Tier 1 PBO. That

information remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

ENVIRONMENTAL BASELINE

The environmental baseline for the Corps' overall program for Federal beach nourishment, re-nourishment, stabilization, drainage, and restoration activities along the Atlantic Coast of New Jersey within the Philadelphia District was established and fully described within the Service's December 2005 Tier 1 PBO. Updated information regarding the status of the piping plover and seabeach amaranth within or near the project area since issuance of the December 2005 Tier 1 PBO has become available and is presented in this letter.

EFFECTS OF THE ACTION

Following review of the information provided by the Corps regarding the subject seawall repair, the Service has determined that the potential effects of the project are consistent with those addressed in the December 2005 Tier 1 PBO and are hereby incorporated by reference. No piping plovers have nested outside the project area since 2015. Seabeach amaranth is not known to have ever occurred near the project area.

CONCLUSION

Actions and effects associated with the project are consistent with those identified and discussed within the Service's December 2005 Tier 1 PBO. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species within the project area, and the effects of the action, it is the Service's Biological Opinion that the project as proposed is not likely to jeopardize the continued existence of the piping plover or seabeach amaranth. No Critical Habitat has been designated for these species within the project area; therefore, no Critical Habitat will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and the Federal regulation pursuant to Section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of carrying out an otherwise lawful activity.

Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to, and not intended as part of the agency action is not considered a prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement. Sections 7(b)(4) and 7(o)(2) of the ESA do not apply to the incidental take of federally listed plants species; therefore, no incidental take statement, and subsequently no reasonable and prudent measures nor terms and conditions were provided for seabeach amaranth within the Service's December 2005 Tier 1 PBO or are provided within this Tier 2 Biological Opinion.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the Service's December 2005 Tier 1 PBO, to minimize the impact of anticipated incidental take of piping plovers. The Service has determined that no new reasonable and prudent measures, beyond those specified in the December 2005 Tier 1 PBO, are needed to minimize the impact of incidental take anticipated for the subject seawall repair.

REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of the proposed Hereford Inlet Seawall repairs. As provided in 50 CFR Section 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or Critical Habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or Critical Habitat that was not considered in this opinion; or, (4) a new species is listed or Critical Habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending re-initiation.

Please contact Carlo Papolizio at (609) 382-5271 if you have any questions regarding these comments or require further assistance regarding threatened or endangered species.

Sincerely,



Eric Schrading
Field Supervisor

cc: Christina.Davis@dep.nj.gov
Mary.E.Brandreth@usace.army.mil

ES:NJFO:Cpopolizio: 11/27/18

P:/Shared/Carlo/19-CPA-0030 [Tier 2 Hereford Seawall]



DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
100 PENN SQUARE EAST, 7th FLOOR WANAMAKER BUILDING
PHILADELPHIA, PENNSYLVANIA 19107-3390

Environmental Resources Branch

NOV 15 2018

Mr. Eric Schrading, Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
Atlantic Professional Park
4 East Jimmie Leeds Road, Suite 4
Galloway, NJ 08205-4465

Dear Mr. Schrading:

In accordance with procedures outlined in the "Biological Opinion on the Effects of Federal Beach Nourishment Activities Along the Atlantic Coast of New Jersey Within the U.S. Army Corps of Engineers, Philadelphia District on the Piping Plover and Seabeach Amaranth", prepared by your office in December 2005, the Philadelphia District is writing to request initiation of streamlined (Tier 2) formal consultation under Section 7 of the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*), with regard to the necessary repairs to the Hereford Inlet Seawall and the concerns over potential direct, indirect and cumulative impacts to the federally threatened piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*). We are also requesting informal consultation related to potential impacts to the rufa red knot (*Calidris canutus rufa*). As shown on the enclosed photos/figures, 3 areas of the seawall have been damaged/undermined by recent erosion and storm activity. The Corps has recently received Emergency Supplemental Funds to make repairs to the damaged areas.

Repairs will include the removal and re-placement of displaced capstone and slope stabilization through the placement of additional concrete marine mattresses and stone fill. Work will be accomplished from both land and water. Work is anticipated to start in early 2019 and take approximately 300 days to complete. The repair work qualifies for the US Army Corps of Engineers Nationwide Permit 3 for maintenance/repair of an existing structure.

The repair work currently proposed will temporarily impact approximately 0.7 acres of subtidal area not previously in the footprint of the existing seawall. Of these temporary impacts, approximately 0.4 acres is currently sandy subtidal bottom and 0.3 acres is currently rocky subtidal habitat. The 0.4 acres of sandy habitat will be temporarily impacted by the placement of the concrete marine mattress over the sandy bottom. This mattress extends beyond the rock fill associated with the seawall and will aid in stabilizing the toe of the structure. Following placement activities, it is anticipated that sand will quickly cover the marine mattress due to the dynamic nature of the inlet.

The 0.3 acres of rocky habitat that will be temporarily impacted will be covered with the marine mattress and additional stone fill, ultimately returning it to rocky habitat but at a higher elevation than the existing conditions.

Piping plovers, least terns and American oystercatchers utilize areas surrounding and adjacent to Hereford Inlet for nesting activities. Red knots also utilize the surrounding area during their fall migration. No work for this project will take place within any delineated beach nesting bird nesting habitat. Due to the long duration of the work (approximately 300 days) it will be necessary for construction activities to occur during the plover nesting season. As can be seen in the enclosed figures, a staging area landward of the existing seawall is located approximately 2,200 feet from the northern edge of the North Wildwood plover nesting area (as designated by Christina Davis, NJDEP). Given the distance to the nesting area, the lack of habitat around the seawall, and the activities taking place, the repair work will have no impact on the North Wildwood nesting area. The enclosed figures also show that, for the piping plover, least tern and American oystercatcher nesting habitat across the inlet at Stone Harbor Point, all repair activities will be at least 730 feet from the 2018 high tide line at the furthest extent of the Point. Nesting activities are not expected to take place this close to the inlet but birds may be feeding in this area, especially at low tide. Due to the distance of water separating the repair work and the nesting/feeding habitat, no direct impacts to piping plovers or other beach nesting birds is expected. Repair activities also should not have significant indirect impacts on the foraging/feeding behavior of the birds due to the location and type of work being conducted. Work equipment will be localized to the immediate area of the repair and will be fairly immobile. In addition, minimal noise will be associated with the work. No piping plover monitoring will be required for this work.

Seabeach amaranth is a small beach dwelling plant generally found on the fore dunes and seaward edges of beaches above the high tide line. Historically, no seabeach amaranth has been found within the project area as there is no suitable amaranth habitat along the seawall.

On September 27, 2013, the United States Fish and Wildlife Service (USFWS) released a proposal to list the *rufa* subspecies of red knot (*Calidris canutus rufa*), as threatened under the ESA. The final rule under the ESA was published December 11, 2014, and became effective January 12, 2015. Red knots are also federally protected under the Migratory Bird Treaty Act and are listed as endangered by the State of New Jersey. Threats to the red knot include sea level rise; coastal development; shoreline stabilization; dredging; reduced food availability at stopover areas; disturbance by vehicles, people, dogs, aircraft, and boats; and climate change. Red knots typically occur in New Jersey during their annual spring and fall migration. Small numbers of red knots may occur year-round in New Jersey, whereas large numbers rely on New Jersey's coastal stopover habitats during the spring (mid-May through early June) and fall (late-July through November) migration periods (USFWS 2015).

The immediate project area does not provide suitable habitat for the red knot. Stone Harbor Point which is across the inlet from the repair work does have the potential to serve as fall migratory stopover habitat for the red knot. During the fall migration, the red knot typically spends time foraging and resting within and above the intertidal zone. Based on the location and type of work involved in the seawall repairs, no impacts to the red knot are expected.

Based on the above information, and the fact that the Corps will follow any applicable reasonable and prudent measures and terms and conditions outlined in the Biological Opinion to protect the species in question, it is concluded that the current plan to repair 3 sections of the Hereford Inlet Seawall will not directly impact the piping plover, red knot, or seabeach amaranth. The potential indirect, secondary, and cumulative impacts to plovers, will be minimal due to the distance from active nesting areas and are "not likely to adversely affect" any listed species. Therefore we believe that the consultation for these repairs can be concluded through informal consultation.

As you are aware, portions of Hereford Inlet fall within the Coastal Barrier Resources System (CBRS) Unit NJ-09 of the Coastal Barrier Resources Act (CBRA). All repair work currently being proposed falls outside of the boundaries of the CBRA unit and will have no impact on Unit NJ-09.

At this time, we are requesting a written response indicating your concurrence with our proposed course of action with regard to direct and indirect impacts to these threatened species and the proposed Corps construction activities. This response will serve to conclude the Section 7 Consultation Process for current repairs of the Hereford Inlet Seawall. We appreciate your attention to this matter.

If you have any questions or require additional information, please contact Ms. Beth Brandreth of the Environmental Resources Branch at (215) 656-6558 or via email Mary.E.Brandreth@usace.army.mil.

Sincerely,



Peter R. Blum, P.E.
Chief, Planning Division

Enclosures

Cc:
Christina Davis, NJDEP
Christina.Davis@dep.nj.gov

Water based operations limited between Sta. 3+40 to 6+10 and 6+90 to 8+60. All other work is landward of the seawall.

Approximately 730 feet from seaward edge of construction to highwater line at Stone Harbor Point

Water based operations limited between Sta. 15+10 to 16+10. All other work is landward of the seawall.

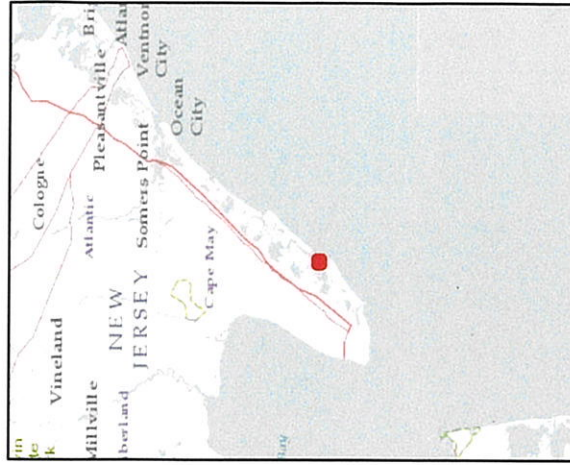
Staging area landward of the seawall with potential for onloading of barges.

Legend

- 2018RepairCWL
- Hereford Inlet Stations
- NWildwood_PPNesting

Imagery Date: 17 March 2018 Imagery Time: 12:05 PM
High Tide: 08:15 AM Low Tide: 2:25 PM (Atlantic City)
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STONE SEAWALL REPAIR HEREFORD INLET - ANGLESEA Townsend's Inlet to Cape May Inlet North Wildwood, New Jersey



Staging Area landward of existing seawall.
Contractor may use area of onloading of barges.
No other construction activities in this area.

Approximately 2,200 feet from
southern edge of construction
to northern edge of nesting habitat

Legend

- 2018RepairCWL
- NWildwood_PPNesting

Imagery Date: 17 September 2017 Imagery Time: 12:09 PM
High Tide: 06:10 PM Low Tide: 11:46 AM (Atlantic City)
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STONE SEAWALL REPAIR HEREFORD INLET - ANGLESEA Townsend's Inlet to Cape May Inlet North Wildwood, New Jersey

